

IN THE MISSOURI SUPREME COURT

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NO. SC85132

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STATE OF MISSOURI, ex rel. DAVID H. TRIMBLE, et al.,

Relators,

v.

THE HONORABLE MARGARET M. NEILL,

Respondent.

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On Petition for Writ of Mandamus and/or Prohibition

Directed to

Honorable Margaret M. Neill

Circuit Judge, Missouri Circuit Court

Twenty-Second Judicial Circuit

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**BRIEF OF RESPONDENT**

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## **JURISDICTIONAL STATEMENT**

This is an original proceeding in mandamus and/or prohibition to prohibit Respondent, the Honorable Margaret M. Neill (or the current Presiding Judge for the Circuit Court for the City of St. Louis), from taking any further action in this case except to transfer the entire case to a proper venue.

Pursuant to Article V, Section 4, of the Missouri Constitution, the Missouri Supreme Court is authorized to issue extraordinary original remedial writs.

## **STATEMENT OF FACTS**

Relators, the surviving spouse and adult children of Hazel Trimble, filed a wrongful death and lost chance of survival action against two Missouri nonprofit corporate defendants BJC Health System (hereinafter also “BJC”) and Missouri Baptist Medical Center (“Missouri Baptist”) in the Circuit Court of the City of St. Louis. (See *Exhibit 1*, ¶¶ 3-4).<sup>1</sup> The basis of the claim is the health care provided to Hazel Trimble at Missouri Baptist Medical Center in St. Louis County. (See *Exhibit 1*, ¶ 8).

In their Petition and Brief, Relators Trimble specifically admit that § 355.176.4 is the applicable venue statute. (See *Petition for Writ*, ¶ 2; *Relators’ Brief*, page 8, Point Relied On I). Plaintiffs do not dispute that the alleged cause of action against both Defendants accrued at Missouri Baptist in St. Louis County. (See *Relators’ Brief*, page 6). Plaintiffs do not dispute that Missouri Baptist Medical Center has its principal place of business and registered agent located in St. Louis County. (See *Relators’ Brief*, page 6). Plaintiffs do not dispute that Defendant BJC Health System has its registered agent with an office located in St. Louis County. (See *Relators’ Brief*,

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<sup>1</sup> All exhibit references, unless otherwise noted, are to the exhibits submitted by Relators Trimble with their Petition for Writ of Mandamus and/or Prohibition, filed with this Court on February 26, 2003.

page 6). Instead, Plaintiffs incorrectly, and without any valid support, allege that venue in the City of St. Louis is proper for Missouri Baptist Medical Center because venue is proper there as to the allegedly jointly liable defendant, BJC Health Center.

On February 28, 2003, Defendants Missouri Baptist and BJC Health System filed with this Court their own Petition for Writ of Mandamus and/or Prohibition. (*Missouri Supreme Court Cause No. SC85135*). In that Petition, these Defendants contend that Respondent's November 27, 2002, order, was in excess of her jurisdiction in that: (1) she failed to carry out her ministerial duty to grant the motions of Defendants BJC and Missouri Baptist to transfer the venue of this *entire* case to St. Louis County pursuant to § 355.176.4, RSMo, and; (2) to accomplish this, Respondent erroneously interpreted Rule 51.045 ("Transfer of Venue When Venue Improper") to permit her to exercise judicial discretion in ruling on a motion to transfer venue where the pertinent venue facts are not in dispute, and; (3) furthermore, Respondent committed an abuse of discretion implementing her erroneous interpretation of Rule 51.045 by ordering separate trials for allegedly jointly liable Defendants, in contravention of Missouri public policy, Supreme Court Rule 66.02 and § 510.180, RSMo. On April 1, 2003, this Court issued its Preliminary Writ of Prohibition as to Missouri Baptist

and BJC's Petition, and on May 30, 2003, Relators BJC Health System and Missouri Baptist filed their initial brief with this Court.



**POINTS RELIED ON**

**I. RELATORS TRIMBLE ARE NOT ENTITLED TO A WRIT OF MANDAMUS AND/OR PROHIBITION COMPELLING RESPONDENT TO VACATE HER ORDER OF NOVEMBER 27, 2002, AND PROHIBITING RESPONDENT FROM TRANSFERRING ANY PART OF THIS CASE TO ST. LOUIS COUNTY, BECAUSE PURSUANT TO § 355.176.4, RSMo, THE EXCLUSIVE VENUE FOR THE CLAIMS AGAINST NONPROFIT CORPORATION MISSOURI BAPTIST MEDICAL CENTER IS IN ST. LOUIS COUNTY IN THAT IT IS UNDISPUTED THAT THE CAUSE OF ACTION ACCRUED THERE, ITS PRINCIPAL PLACE OF BUSINESS WAS AND IS LOCATED THERE, AND THE OFFICE OF ITS REGISTERED AGENT WAS AND IS LOCATED THERE, AND IT IS UNDISPUTED THAT ST. LOUIS COUNTY IS ALSO A PROPER VENUE FOR NONPROFIT CORPORATION BJC HEALTH SYSTEM IN THAT ITS REGISTERED AGENT IS LOCATED THERE AND THE CAUSE OF ACTION ACCRUED THERE.**

State ex rel. SSM Health Care St. Louis v. Neill, 78 S.W.3d 140 (Mo. banc  
2002)

State ex rel. BJC Health System v. Neill, 86 S.W.3d 138 (Mo. App. E.D.

2002)

§ 355.176.4, RSMo

Missouri Supreme Court Rule 51.045

**II. RELATORS TRIMBLE ARE NOT ENTITLED TO A WRIT OF MANDAMUS AND/OR PROHIBITION COMPELLING RESPONDENT TO VACATE HER ORDER OF NOVEMBER 27, 2002, AND PROHIBITING RESPONDENT FROM TRANSFERRING THIS CASE TO ST. LOUIS COUNTY BECAUSE PROPER VENUE LIES IN ST. LOUIS COUNTY AND THERE WAS NO BASIS TO ORDER, *SUA SPONTE*, A SEPARATE TRIAL OF THE CLAIMS AGAINST MISSOURI BAPTIST MEDICAL CENTER FROM THOSE AGAINST ALLEGED JOINT TORTFEASOR BJC HEALTH SYSTEM, IN THAT SEPARATE TRIALS UNDER THE FACTS OF THIS CASE ARE IN CONTRAVENTION OF MISSOURI POLICY AND LAW, INCLUDING SUPREME COURT RULE 66.02 AND § 510.180, RSMo.**

Hunt v. Missouri R.R. Co., 14 Mo. App. 160 (Mo. App. E.D. 1883)

Bhagvandoss v. Beiersdorf, Inc., 723 S.W.2d 392 (Mo. banc 1987)

Guess v. Escobar, 26 S.W.3d 235 (Mo. App. W.D. 2000)

Carter v. Tom's Trucking Repair, Inc., 857 S.W.2d 172 (Mo. banc 1993)

§ 355.176.4, RSMo

§ 510.180, RSMo

Missouri Supreme Court Rule 66.02

## **ARGUMENT**

**I. RELATORS TRIMBLE ARE NOT ENTITLED TO A WRIT OF MANDAMUS AND/OR PROHIBITION COMPELLING RESPONDENT TO VACATE HER ORDER OF NOVEMBER 27, 2002, AND PROHIBITING RESPONDENT FROM TRANSFERRING ANY PART OF THIS CASE TO ST. LOUIS COUNTY, BECAUSE PURSUANT TO § 355.176.4, RSMo, THE EXCLUSIVE VENUE FOR THE CLAIMS AGAINST NONPROFIT CORPORATION MISSOURI BAPTIST MEDICAL CENTER IS IN ST. LOUIS COUNTY IN THAT IT IS UNDISPUTED THAT THE CAUSE OF ACTION ACCRUED THERE, ITS PRINCIPAL PLACE OF BUSINESS WAS AND IS LOCATED THERE, AND THE OFFICE OF ITS REGISTERED AGENT WAS AND IS LOCATED THERE, AND IT IS UNDISPUTED THAT ST. LOUIS COUNTY IS ALSO A PROPER VENUE FOR NONPROFIT CORPORATION BJC HEALTH SYSTEM IN THAT ITS REGISTERED AGENT IS LOCATED THERE AND THE CAUSE OF ACTION ACCRUED THERE.**

**A. Standard for Issuance of Extraordinary Writ**

A writ of prohibition will be issued only to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extra-jurisdictional power. *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 142 (Mo. banc 2002). Because improper venue is a fundamental defect, a court that acts when venue is improper acts in excess of its jurisdiction, and prohibition lies to bar the trial court from taking any further action, except to transfer the case to a proper venue. *Id.*

**B. Pursuant to § 355.176.4 and the holdings of the two *State ex rel. SSM Health Care St. Louis v. Neill* cases, the entire case must be transferred to the Circuit Court of St. Louis County as the only proper venue for Plaintiffs' claims against Defendant Missouri Baptist Medical Center.**

As a nonprofit corporation, and pursuant to § 355.176.4, RSMo (1994),<sup>2</sup> Missouri Baptist can be sued *only* in one of the following three

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<sup>2</sup> For the Court's convenience, a copy of § 355.176, with the historical version of subsection 4, is submitted at Tab 2 (page A12 – A13) of Respondent's attached Appendix. Subsection 4 of § 355.176, RSMo (1994) is still in effect. *State ex rel. SSM Health Care v. Neill*, 78 S.W.3d 140, 143 (Mo. banc 2002).

locations: (1) the county in which the nonprofit corporation maintains its principal place of business; (2) the county where the cause of action accrued; and (3) the county where the office of the registered agent for the nonprofit corporation is located. As acknowledged by Respondent (*Exhibit 2*, pages 3-4; see also Tab 1, A3 – A4, attached hereto), under the facts of this case, Missouri Baptist can be sued *only* in the Circuit Court of St. Louis County in that there is no dispute that the alleged cause of action against Missouri Baptist accrued in St. Louis County, the office of its registered agent is located in St. Louis County, and its principal place of business is located in St. Louis County. (*Exhibit 2*, pages 3-4; A3 – A4).

In holding that venue was improper in the City of St. Louis, this Court in *State ex rel. SSM Health Care v. Neill*, 78 S.W.3d 140, 143 (Mo. banc 2002), closely analyzed the language of § 355.176.4 when compared to other venue statutes, including §§ 508.010, 508.040 and 508.050. *Id.* at 143-44. This Court concluded that § 355.176.4, RSMo, provided the “exclusive venues” in which a nonprofit corporation can be sued. *Id.* at 144-45 (emphasis added). Therefore, § 355.176.4 in effect acts as a venue trump card over all other venue statutes and all other venues that might be proper to other defendants, whether individual or corporate. Thus, all other venue rights yield to it. *Id.*

In the case at bar, the *only* venue proper for all Defendants and improper as for none is St. Louis County. Respondent concedes in her November 27, 2002, order that the only proper venue for Missouri Baptist is in St. Louis County; it is a nonprofit corporation and as such can *only* be sued (1) where it maintains its principal place of business (St. Louis County), (2) where the cause of action accrued (St. Louis County), or (3) the location of the office for its registered agent (St. Louis County). (See *Exhibit 2, pages 3-4; A3 – A4*). Pursuant to § 355.176.4, the Circuit Court of St. Louis County is the exclusive venue within which Missouri Baptist can be sued. Furthermore, co-defendant BJC Health System is a Missouri nonprofit corporation with its registered agent in St. Louis County and the alleged cause of action against it, if any, accrued at Missouri Baptist, which is only located in St. Louis County. (See *Exhibits 1, ¶ 8; Relators’ Brief at page 6*). Thus, under the facts of this case, the only proper venue for both of these nonprofit corporations is in St. Louis County.

Boiled down, Relators’ argument is that, although this Court in *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140 (Mo. banc 2002), has identified § 355.176.4 as providing the exclusive venues for suits against a nonprofit corporation, Defendant BJC’s presence in the City of St. Louis as an allegedly jointly liable defendant trumps Missouri Baptist’s venue

rights under that statute. As is evident from their Brief, Relators’ support for this argument comes from a misplaced reliance on § 508.040, and the cases interpreting that statute, and Relators’ erroneous contention that § 508.040 and § 355.176.4 are analogous.

As this Court noted, however, “[w]hile [an] analogy to the interpretation of section 508.040 is appealing at first blush, it fails to sufficiently take into account the difference in wording between section 508.040 and section 355.176.4.” *SSM Health Care*, 78 S.W.3d at 144. Section 508.040 provides that “[s]uits against corporations ***shall be commenced...***” in one of two locations. Section 508.040 (emphasis added). Section 355.176.4, by contrast, expressly states that “[s]uits against a nonprofit corporation ***shall be commenced only*** in one of” three locations. Section 355.176.4 (emphasis added). In *SSM Health Care v. Neill*, this Court made two important holdings that are directly applicable to the facts of this matter. First, this Court noted that § 355.176.4 governs venue in suits in which a nonprofit corporation is sued alone or with other nonprofit corporate defendants. 78 S.W.3d at 143. Second, this Court held that “the legislature’s use and placement of *both* the words ‘shall’ and ‘only’ in section 355.176.4 signifies on its face that the legislature intended to designate **exclusively** those locations set out in section 355.176.4 as



permissible venues for suit against nonprofit corporations, and **restrict** venue to them...” 78 S.W.3d at 143 (emphasis to “both” in original, remaining emphasis added). What is clear from the *SSM Health Care* holdings, therefore, is that § 355.176.4, unlike § 508.040, is a restricting or limiting venue statute, designed to specifically identify the only three permissible venues for suits against a nonprofit.

Relators Trimble, by contrast, cite to § 508.040 and rely heavily on cases interpreting that statute to support their erroneous conclusion that venue as to one nonprofit corporation is venue as to all nonprofit corporations. Relators’ conclusion, however, completely ignores the plain differences in the language of § 355.176.4 and this Court’s interpretation of that language. “Section 355.176.4 expressly provides the **exclusive venues in which a nonprofit can be sued** in Missouri.” 78 S.W.3d at 145.

Here, there is no dispute that Missouri Baptist, a nonprofit corporation, maintains its principal place of business in St. Louis County, that the cause of action accrued in St. Louis County, and that Missouri Baptist’s registered agent’s office is in St. Louis County. Thus, under § 355.176.4 and *State ex rel. SSM Health Care v. Neill* the “exclusive venue” within which Missouri Baptist can be sued under the facts of this case is St. Louis County. Since there is no dispute that venue is also proper

as to BJC in St. Louis County, there is no conflict, venue impasse, or inconsistency with transfer of this entire case to St. Louis County, the ONLY and exclusive county within which Missouri Baptist can be sued under § 355.176.4.

Relators Trimble attempt to create a venue impasse by raising hypothetical questions of what might happen if there is no one venue which is proper as to all nonprofit defendants under § 355.176.4. (See *Relators' Brief*, page 20). It is undisputed, however, that those are not the facts of this case, and Relators' argument in this regard amounts to nothing more than a request for an advisory opinion; something this Court has said it cannot and will not deliver. *State ex rel. Ellsworth Freight Lines, Inc. v. State Tax Commission of Mo.*, 651 S.W.2d 130, 132 (Mo. banc 1983); *In re Estate of Van Cleave*, 574 S.W.2d 375, 376 (Mo. banc 1978).

Here, the exclusive venue within which Missouri Baptist can be sued, St. Louis County, is also a proper venue under § 355.176.4 for BJC Health System. Unlike what Relators Trimble suggest, a transfer of the entire case to St. Louis County does not mean that venue has been analyzed separately

for each allegedly jointly liable Defendant, but rather that venue is being analyzed *consistently* for all such Defendants.<sup>3</sup>

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<sup>3</sup> Although Relators' Brief (page 27) tries to draw a distinction between the facts of this case and the facts present in *State ex rel. BJC Health System v. Neill*, 86 S.W.3d 138 (Mo. App. E.D. 2002), by stating that in *BJC v. Neill* the Court of Appeals for the Eastern District of Missouri found that joint liability had not been properly alleged, the fact of the matter remains that despite its finding that joint liability had not been properly alleged, the Eastern District ordered Respondent to transfer the *entire* case to St. Louis County based on St. Louis County being the exclusive venue within which Missouri Baptist could be sued under § 355.176.4. *State ex rel. BJC Health System v. Neill*, 86 S.W.3d 138, 140 (Mo. App. E.D. 2002).

**II. RELATORS TRIMBLE ARE NOT ENTITLED TO A WRIT OF MANDAMUS AND/OR PROHIBITION COMPELLING RESPONDENT TO VACATE HER ORDER OF NOVEMBER 27, 2002, AND PROHIBITING RESPONDENT FROM TRANSFERRING THIS CASE TO ST. LOUIS COUNTY BECAUSE PROPER VENUE LIES IN ST. LOUIS COUNTY AND THERE WAS NO BASIS TO ORDER, *SUA SPONTE*, A SEPARATE TRIAL OF THE CLAIMS AGAINST MISSOURI BAPTIST MEDICAL CENTER FROM THOSE AGAINST ALLEGED JOINT TORTFEASOR BJC HEALTH SYSTEM, IN THAT SEPARATE TRIALS UNDER THE FACTS OF THIS CASE ARE IN CONTRAVENTION OF MISSOURI POLICY AND LAW, INCLUDING SUPREME COURT RULE 66.02 AND § 510.180, RSMo.**

**A. Standard for Issuance of Extraordinary Writ**

A writ of prohibition will be issued only to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extra-jurisdictional power. *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 142 (Mo. banc 2002). Because improper venue is a fundamental defect, a court that acts when venue is improper acts

in excess of its jurisdiction, and prohibition lies to bar the trial court from taking any further action, except to transfer the case to a proper venue. *Id.*

**B. There was no authority or jurisdiction in undertaking any task pursuant to Supreme Court Rule 51.045 other than transferring the entire case to St. Louis County.**

In the second of their Points Relied On, Relators Trimble contend that the indivisible nature of a wrongful death claim mandates that Respondent's November 27, 2002, order be vacated and that the claims against Missouri Baptist be transferred back to the City of St. Louis. Although Relators are correct that discovery and trial of this wrongful death action in two separate venues is contrary to Missouri law, it does not follow that all claims must be tried in the City of St. Louis.

As addressed in the first of the Points Relied On herein, the undisputed venue facts pertinent to the operation of § 355.176.4, RSMo, mandate that Respondent transfer this entire case to St. Louis County. Therefore, upon a finding that St. Louis County is the exclusive proper venue for Plaintiffs' claims against Missouri Baptist and upon finding that St. Louis County is a proper venue for BJC, the entire case should have been transferred to St. Louis County because there was no jurisdiction to do

anything else. *State ex rel. BJC Health System v. Neill*, 86 S.W.3d 138, 141 (Mo. App. E.D. 2002).

No party hereto, including Plaintiffs, moved to have the Circuit Court sever any claims in the case for separate trial. Respondent held in her November 27, 2002, order, that Relators Trimble pleaded this case against Defendants Missouri Baptist and BJC as a theory of alleged joint tortfeasors. As such, separate trials for these two Defendants (1) is contrary to the legal policy in Missouri that claims against alleged joint tortfeasors are to be tried in a single trial; (2) is contrary to Rule 66.02 (and its parallel statutory provision in § 510.180, RSMo); (3) ignores Plaintiffs' allegations of joint liability; and (4) is erroneous in holding that judicial economy supports severance of the claims against BJC from those against Missouri Baptist.

Missouri legal policy, statute and court rule make clear that the same claims against allegedly joint tortfeasors are to be tried in a single trial. Under long-standing Missouri law, claims against separate Defendants sued on the same claim or issue should have a single trial. *See Hunt v. Missouri R.R. Co.*, 14 Mo. App. 160 (Mo. App. E.D. 1883). More recently, Missouri's affirmation of this view was stated in *Bhagvandoss v. Beiersdorf, Inc.*, 723 S.W. 2d 392, 395 (Mo. banc 1987) ("The policy of the law is to try

all issues arising out of the same occurrence or series of occurrences together.”).

Missouri codified the concept of judicial economy in early versions of what is now § 510.180, RSMo,<sup>4</sup> which sets forth the few circumstances for permitting a separate trial. That statute is very similar in its factors to those set forth in Missouri Supreme Court Rule 66.02,<sup>5</sup> which also sets forth the few circumstances for permitting a court to order a separate trial. That Rule provides in pertinent part that a court “in the furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition or economy, may order a separate trial of any claim, ...or of any separate issue or of any number of claims... or issues”. Rule 66.02. Such a decision is within the discretion of the trial court and will not be disturbed unless there has been an abuse of discretion. *Guess v. Escobar*, 26 S.W.3d 235, 239 (Mo. App. W.D. 2000). A discretionary ruling is presumed correct, and an abuse of discretion occurs only if the reviewing court finds the trial court’s ruling is clearly against the logic of the circumstances and so arbitrary and

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<sup>4</sup> For the Court’s convenience, a copy of § 510.180, RSMo, is submitted at Tab 3 (A14 – A15) of Respondent’s Appendix.

<sup>5</sup> For the Court’s convenience, a copy of Missouri Supreme Court Rule 66.02 is submitted at Tab 4 (A16) of Respondent’s Appendix.

unreasonable that it shocks the sense of justice. *Id.* In considering whether a trial court abused its discretion in deciding to sever the case for separate trials, the court must keep in mind that “[t]he policy of the law is to try all issues arising out of the same occurrence or series of occurrences together.” *Bhagvandoss v. Beiersdorf, Inc.*, 723 S.W.2d 392, 395 (Mo. banc 1987); *Guess v. Escobar, supra*, at 239, *citing Bhagvandoss*.

In the case at bar, Plaintiffs’ alleged theory is that Defendants Missouri Baptist and BJC acted as joint tortfeasors for health care at Missouri Baptist in June 2000. The relief and damages Plaintiffs seek from both these two Defendants is the same -- for reparation for the injury to, and death of, Hazel Trimble in June 2000. Thus, all claims and issues against these Defendants must have a single trial.

The position that judicial economy is served by ordering separate trials here is quickly shown to be untenable. The prospect of the parties being required to participate in discovery in two cases pending in two separate circuit courts is reason enough. Further, however, the cost of going through almost identical trials in two separate courthouses and the prospect of inconsistent verdicts demonstrate the magnitude of the problems created. These are the very practical considerations that must have led to the public policy of the law being to try a single case and not to sever bits and pieces of



a case into different smaller cases. E.g., *Carter v. Tom's Trucking Repair, Inc.*, 857 S.W.2d 172, 176-77 (Mo. banc 1993) (court held that trial court's refusal to dismiss a co-defendant who had settled with Plaintiff, but who was facing cross-claims was not error).

This Court has recognized that concerns about apportionment of fault and the potential for inconsistent verdicts should not be overlooked or discounted. *Id.* at 177. In *Carter, supra*, the Court stated: "The need for a single jury to apportion fault among all potentially culpable parties and thereby promote judicial economy and preclude inconsistent verdicts is reason enough for [all parties] to remain in the case." *Id.*

Clearly, there was no basis for there being jurisdiction to order anything but a transfer of this entire case to St. Louis County. Furthermore, it was an abuse of discretion to order a separate trial for Defendant BJC Health System and to not transfer Plaintiffs' claims against it to St. Louis County.

## **CONCLUSION**

Respondent requests that the Petition of Relators Trimble be denied and that this Court's Preliminary Writ of Prohibition in SC85132 be vacated. Respondent (or the current presiding judge for the Circuit Court for the City of St. Louis) should be prohibited from taking any further action, other than to transfer the entire case to the Circuit Court for St. Louis County, where venue is proper as to all Defendants. Finally, Respondent respectfully requests that this Court grant such other and further relief as it deems just and proper.

WILLIAMS VENKER & SANDERS LLC

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**CERTIFICATE OF COMPLIANCE WITH**  
**MISSOURI SUPREME COURT RULE 84.06(b) AND RULE 84.06(g)**

The undersigned certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court 84.06(b) and, according to the word count function on Microsoft Word 2000 by which it was prepared, contains 4,092 words of proportional type, exclusive of the cover, Certificate of Service, this Certificate of Compliance, the signature block, and the Appendix. Microsoft Word 2000 was used to prepare Respondent's Brief.

The undersigned further certifies that the diskette filed herewith containing the Respondent's Brief in electronic form complies with Missouri Supreme Court Rule 84.06(g) and that it has been scanned for viruses and is virus-free.

WILLIAMS VENKER & SANDERS LLC

By: \_\_\_\_\_

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AND MISSOURI BAPTIST MEDICAL  
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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copy of the foregoing  
Respondent's Brief and a 3-1/2 inch diskette containing Respondent's Brief  
were mailed, postage prepaid, this 19<sup>th</sup> day of June 2003, to:

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## **APPENDIX**

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